IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1510 OF 2002

M/s.N.C.Bhanushali & Co. ..Petitioners.

Vs.

Mr.Kanti L. Bhanushali & Ors. ..Respondents.

...

Mr.R.M.Joshi for the Petitioner.

Mr.V.B.Dhawan for Respondent No.1.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

6th April, 2005.

P.C. :

1. This Petition is directed against an order of the Industrial Court dated 4th April, 2002. In a revision under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the Industrial Court set aside an order of the Labour Court dismissing a complaint of unfair labour practices filed by the First Respondent and granted reinstatement with full backwages and continuity of service with effect from 21st January, 1999.

2. The Petitioner is a clearing agent and engages about 37 employees. The First Respondent was employed as a clerk on 1st November, 1987. In a complaint filed on 17th February, 1999 before the Labour Court under items 1(a), (b), (d), (f) and (g) of Schedule IV of the Act. The First Respondent averred that on 15th October, 1998 his services came to be terminated by the Petitioner. His claim was that thereafter when he made several attempts to resume work he was not permitted to report by the Petitioner and that on 2nd December, 1998 on one such occasion two letters were issued by the Petitioner to him. The aforesaid letters were alleged to have been dated 18th July, 1998 and 1st September, 1998 and it was submitted in the complaint that the First Respondent was compelled to put his signature by way of acceptance against the dates shown below his signature to create evidence that the letters were issued to him on these dates. The First Respondent stated that he was compelled to accept a cheque of Rs.25,895/- towards his legal dues which he had not encashed.

3. The contention of the Petitioner in the written statement was that the services of the First

Respondent came to be terminated as a sequel to several oral and written warnings that had been furnished to him. The employer stated that no charge-sheet was issued and no enquiry was conducted since an effort was being made to negotiate and settle the matter on a monetary basis. Eventually on 2nd December, 1998 the First Respondent accepted a cheque in the amount of Rs.27,895/- in full and final settlement of his claim which was reflected in a letter of the same date addressed by the First Respondent. In the circumstances, the submission of the Petitioner was that in pursuance of a settlement that was arrived at between the parties, the services of the First Respondent were dispensed with against the payment of a total compensation of Rs.27,895/-.

4. Evidence was adduced before the Labour Court both on behalf of the Petitioner as well as the First Respondent. The Labour Court held that no case of an unfair labour practice had been established. The Labour Court was of the view that there was no evidence to substantiate the case of the First Respondent that he had been compelled to accept the letters of the management forcibly. The

First Respondent carried the matter in revision and the Industrial Court by its order dated 4th April, 2002 allowed the revision and granted reinstatement with full backwages and continuity of service to the First Respondent.

5. Counsel appearing on behalf of the Petitioner submits that there was absolutely no evidence whatsoever that could have led the Industrial Court to conclude that the settlement which was arrived at with the First Respondent was not voluntary or that his signatures have been taken forcibly by the management. It was urged that the power of revision under Section 44 is akin to a supervisory power and the Industrial Court has transgressed the limitations on its jurisdiction by reappreciating the evidence and in substituting its own conclusions for those of the Labour Court. This, it was submitted, is not permissible.

6. Now the grievance of the First Respondent in his complaint before the Labour Court was that on 15th October, 1998, his services were terminated; that when he went to report on 2nd December, 1998, he was compelled to put his signatures against two

letters of the management purportedly of 18th July, 1998 and 1st September, 1998 and that he was compelled to accept a cheque for Rs.27,895/- which he had not encashed. If the evidence of the First Respondent is perused, one striking feature which emerges therefrom is the complete absence of any reference to the fact that his signature was taken forcibly or that he was compelled to enter into a settlement by coercion or undue influence. On the contrary, the First Respondent was shown in the course of his cross examination a copy of his own letter dated 2nd December, 1998 which he admitted to be in his own handwriting and to bear his own signature. The First Respondent admitted that he had not lodged any police complaint to the effect that the management had taken his signature forcibly. Now if the letter of the First Respondent dated 2nd December, 1998 is perused what emerges therefrom is a statement by the First Respondent that upon the termination of his services, he has received all his dues by way of salary, bonus and gratuity and that he had no claim whatsoever against the management. The First Respondent in the course of his cross examination admitted that the letter was his and that the

signature on the letter was his signature. On this state of the record, the Industrial Court virtually reappreciated the evidence which had been marshalled by the Labour Court and came to the conclusion that the First Respondent had been forced to sign his letter dated 2nd December, 1998 against his will. Two extracts from the order of the Industrial Court are material for this purpose and they read as follows :

> "It is specifically stated by the Complainant in the Complaint and also in the evidence that on the said letters he was forced to sign and the cheque which was given by the employer has not been encashed by him. Meaning thereby, the Complainant was not satisfied with the so-called settlement between the employer and the employee and therefore feeling aggrieved of the termination of his services, he rushed to the Labour Court by giving the details and particulars in the Complaint."
>
> "....the Complainant has specifically

> stated that the Company forcibly took the signatures from him on the aforesaid letters." (emphasis supplied).

7. The Industrial Court seems to have proceeded on the basis that the evidence of the First Respondent was that he was forced to sign on the letters issued by the management and upon his own letter dated 2nd December, 1998. This inference is not supported by any evidence at all. On the contrary, there is not even a reference in the evidence of the First Respondent of his being forced to sign any letter against his will. Though there was an allegation to that effect in the complaint, that allegation was required to be substantiated in evidence. There was no such effort on the part of the First Respondent when he stepped into the witness box. Indeed, a letter written by the First Respondent on 21st January, 1999 to the Petitioner in which a complaint is made for the first time would indicate that the First Respondent was willing to settle the dispute but that he demanded an amount of Rs.60,587/-.

8. The powers of the Industrial Court in revision

under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 are supervisory powers. In the exercise of those powers it is not open to the Industrial Court to reappreciate the evidence on the record or to substitute its own opinion on facts for the view which has been arrived at by the Labour Court merely because a particular view appears to the Industrial Court to be a better view to take. Undoubtedly, if the order of the Labour Court suffers from legal perversity in the sense that the Labour Court has ignored material evidence or has entered a finding which no reasonable adjudicating body could have arrived at, the interference of the Industrial Court would be justified. Such was not the case here. There was no breach of procedure on the part of the Labour Court. The Labour Court was acting within jurisdiction. The order of the Labour Court was based on the evidence on record. In the circumstances, the interference of the Industrial Court was manifestly not warranted. The impugned order of the Industrial Court is manifestly unsustainable.

9. During the pendency of these proceedings, this Court noted in an interim order dated 20th August, 2002 that a cheque of Rs.27,895/- has been handed over to the First Respondent without prejudice to his rights and contentions since the earlier cheque had not been encashed. Counsel appearing for the Petitioner states that the aforesaid cheque has been duly encashed by the First Respondent.

10. In the circumstances, the Petition has to be allowed and is accordingly allowed. The order of the Industrial Court dated 4th April, 2002 is quashed and set aside. Complaint (ULP) No.116 of 1999 shall, in the circumstances, stand dismissed. There shall be no order as to costs.